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December 2020

### Administrative Appeal Decision - Prout, Russell (2019-12-09)

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STATE OF NEW YORK – BOARD OF PAROLE

**ADMINISTRATIVE APPEAL DECISION NOTICE**

Name: Prout, Russell

Facility: Clinton CF

NYSID: [REDACTED]

Appeal  
Control No.: 02-061-19 B

DIN: 85-C-0799

Appearances: Tina Soloski, Esq.  
Anderson & Soloski, LLP  
50 Clinton Street, Suite 1  
P.O. Box 2723  
Plattsburgh, NY 12901

Decision appealed: January 2019 decision, denying discretionary release and imposing a hold of 18 months.

Board Member(s)  
who participated: Agostini, Davis

Papers considered: Appellant's Brief received July 17, 2019


Appeals Unit Review: Statement of the Appeals Unit's Findings and Recommendation

Records relied upon: Pre-Sentence Investigation Report, Parole Board Report, Interview Transcript, Parole Board Release Decision Notice (Form 9026), COMPAS instrument, Offender Case Plan.

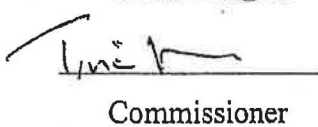
Final Determination: The undersigned determine that the decision appealed is hereby:

  
Commissioner

☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_


  
Commissioner

☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

  
Commissioner

☒ Affirmed ☐ Vacated, remanded for de novo interview ☐ Modified to \_\_\_\_\_

**If the Final Determination is at variance with Findings and Recommendation of Appeals Unit, written reasons for the Parole Board's determination must be annexed hereto.**

This Final Determination, the related Statement of the Appeals Unit's Findings and the separate findings of the Parole Board, if any, were mailed to the Inmate and the Inmate's Counsel, if any, on 12/9/19 .

Distribution: Appeals Unit – Appellant – Appellant's Counsel – Inst. Parole File – Central File  
P-2002(B) (11/2018)

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

**Name:** Prout, Russell

**DIN:** 85-C-0799

**Facility:** Clinton CF

**AC No.:** 02-061-19 B

**Findings:** (Page 1 of 2)

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Appellant challenges the January 2019 determination of the Board, denying release and imposing an 18-month hold. The instant offense involved the appellant beating his wife to death and setting their home on fire with his wife and two small children inside. Appellant raises the following issues: 1) the Board failed to consider the proper statutory factors; 2) the Board's decision was arbitrary and capricious because it did not consider Appellant's programming, development, or release plans; and 3) the Board placed too much emphasis on Appellant's instant offense. These arguments are without merit.

As an initial matter, discretionary release to parole is not to be granted "merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he will live and remain at liberty without violating the law, **and** that his release is not incompatible with the welfare of society **and** will not so deprecate the seriousness of his crime as to undermine respect for the law." Executive Law § 259-i(2)(c)(A) (emphasis added); accord Matter of Hamilton v. New York State Div. of Parole, 119 A.D.3d 1268, 990 N.Y.S.2d 714 (3d Dept. 2014). Executive Law § 259-i(2)(c)(A) requires the Board to consider criteria which is relevant to the specific inmate, including, but not limited to, the inmate's institutional record and criminal behavior. People ex rel. Herbert v. New York State Bd. of Parole, 97 A.D.2d 128, 468 N.Y.S.2d 881 (1st Dept. 1983).

While consideration of these factors is mandatory, "the ultimate decision to parole a prisoner is discretionary." Matter of Silmon v. Travis, 95 N.Y.2d 470, 477, 718 N.Y.S.2d 704, 708 (2000). Thus, it is well settled that the weight to be accorded the requisite factors is solely within the Board's discretion. See, e.g., Matter of Delacruz v. Annucci, 122 A.D.3d 1413, 997 N.Y.S.2d 872 (4<sup>th</sup> Dept. 2014); Matter of Hamilton, 119 A.D.3d at 1271, 990 N.Y.S.2d at 717; Matter of Garcia v. New York State Div. of Parole, 239 A.D.2d 235, 239, 657 N.Y.S.2d 415, 418 (1<sup>st</sup> Dept. 1997). The Board need not explicitly refer to each factor in its decision, nor give them equal weight. Matter of Betancourt v. Stanford, 148 A.D.3d 1497, 49 N.Y.S.3d 315 (3d Dept. 2017); Matter of LeGeros v. New York State Bd. Of Parole, 139 A.D.3d 1068, 30 N.Y.S.3d 834 (2d Dept. 2016); Matter of Phillips v. Dennison, 41 A.D.3d 17, 21, 834 N.Y.S.2d 121, 124 (1<sup>st</sup> Dept. 2007). In the absence of a convincing demonstration that the Board did not consider the statutory factors, it must be presumed that the Board fulfilled its duty. Matter of Fuchino v. Herbert, 255 A.D.2d 914, 914, 680 N.Y.S.2d 389, 390 (4<sup>th</sup> Dept. 1998); Matter of McLain v. New York State Div. of Parole, 204 A.D.2d 456, 611 N.Y.S.2d 629 (2d Dept. 1994); Matter of McKee v. New York State Bd. Of Parole, 157 A.D.2d 944, 945, 550 N.Y.S.2d 204, 205 (3d Dept. 1990); People ex rel. Herbert, 97 A.D.2d 128, 468 N.Y.S.2d 881.

The record as a whole, including the interview transcript, reflects that the Board considered the appropriate factors, including: the instant offense involving Appellant beating his wife to death

STATE OF NEW YORK – BOARD OF PAROLE

**APPEALS UNIT FINDINGS & RECOMMENDATION**

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and setting fire to their house with his wife and two young children still inside; his criminal record including four prior state bids, multiple violent robberies, and parole violations; institutional record including three recent Tier II tickets, educational efforts, vocational training, and completion of ART and other voluntary programs; and release plans to seek assistance from a reentry organization. The Board also had before it and considered, among other things, the case plan, the COMPAS instrument, the sentencing minutes, and letters of support.

After considering all required factors, the Board acted within its discretion in determining release would not satisfy the standards provided for by Executive Law § 259-i(2)(c)(A). In reaching its conclusion, the Board permissibly relied on the instant offense, Appellant's criminal record, the sentencing court's recommendation to deny parole, and Appellant's limited compassion for his wife and children. See Matter of Boccadisi v. Stanford, 133 A.D.3d 1169, 20 N.Y.S.3d 477 (3d Dept. 2015); Matter of Trobiano v. State of New York Div. of Parole, 285 A.D.2d 812, 728 N.Y.S.2d 269 (3d Dept.), *lv. denied*, 97 N.Y.2d 607, 738 N.Y.S.2d 290 (2001); Matter of Davis v. Evans, 105 A.D.3d 1305, 963 N.Y.S.2d 485 (3d Dept. 2013); Matter of Lashway v. Evans, 110 A.D.3d 1417, 1418, 974 N.Y.S.2d 164, 165 (3d Dept. 2013); Matter of Rodriguez v. New York State Bd. of Parole, 168 A.D.3d 1342, 92 N.Y.S.3d 482 (3d Dept. 2019); Matter of Copeland v. New York State Bd. of Parole, 154 A.D.3d 1157, 63 N.Y.S.3d 548 (3d Dept. 2017); Matter of Silmon v. Travis, 95 N.Y.2d 470, 478, 718 N.Y.S.2d 704 (2000); Matter of Beodeker v. Stanford, 164 A.D.3d 1555, 82 N.Y.S.3d 669 (3d Dept. 2018). The Board encouraged Appellant to develop a more realistic reentry plan. See Matter of Delrosario v. Stanford, 140 A.D.3d 1515, 34 N.Y.S.3d 696 (3d Dept. 2016).

In conclusion, Appellant has failed to demonstrate the Board's decision was not made in accordance with the pertinent statutory requirements or was irrational "bordering on impropriety." Matter of Silmon, 95 N.Y.2d 470, 476, 718 N.Y.S.2d 704 (2000) (quoting Matter of Russo v. New York State Bd. of Parole, 50 N.Y.2d 69, 427 N.Y.S.2d 982 (1980)).

**Recommendation:** Affirm.